
Nos. 14-9529, 14-9530, 14-9533 & 14-9534

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

STATE OF WYOMING, et al.,
Petitioners,

vs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

ON PETITION FOR REVIEW OF A FINAL RULE FROM THE
ENVIRONMENTAL PROTECTION AGENCY

**Motion by the State of Wyoming, Basin Electric Power Cooperative,
and PacifiCorp to Abate Proceedings Pending Settlement Process**

INTRODUCTION

Petitioners the State of Wyoming, Basin Electric Power Cooperative, and PacifiCorp hereby move the Court to hold these consolidated appeals in abeyance pending final action by Respondent U.S. Environmental Protection Agency (EPA) on a tentative settlement of certain issues with Wyoming and Basin Electric.

By separate motion, EPA, Wyoming, and Basin Electric are seeking a stay, as outlined in the parties' Settlement Agreement, of the issues pertaining to Basin Electric's Laramie River facility. However, because these "Laramie River" issues are significantly intertwined with, and overlap, similar issues concerning PacifiCorp's facilities, Movants respectfully ask the Court to abate the entire

proceeding pending final action on the settlement. Such an abatement is necessary because of the interrelatedness of the issues in these consolidated appeals and because of the inefficiencies and harms that may result from resolving a portion of the appeals while the settlement of other, closely-related portions remain pending.

Staying review of the entire matter will support the tentative settlement related to the Laramie River facility and will conserve the Court's and parties' resources. By contrast, proceeding now to argument and decision on other portions of the case, including those related to PacifiCorp's facilities, may well result in wasted resources, substantial confusion, and interference with the ongoing settlement process. Therefore, this Court should abate the entire proceeding.

Pursuant to 10th Cir. R. 27.1, Movants have conferred with the other parties to these proceedings regarding this motion. EPA has stated as follows: "EPA authorizes [Movants] to state in their motion to place all four of these consolidated cases in abeyance that EPA does not oppose their request to hold the cases in abeyance." The Conservation Organizations oppose this motion.

PROCEDURAL BACKGROUND

The petitions for review. The four consolidated appeals all challenge EPA's Final Rule at 79 Fed. Reg. 5032 (Jan. 30, 2014). The Final Rule approved in part and disapproved in part Wyoming's State Implementation Plan (SIP) to address nitrogen oxide (NO_x) emissions under Section 169A of the Clean Air Act

(CAA), 42 U.S.C. § 7491, and replaced the disapproved parts of the SIP with a Federal Implementation Plan (FIP). *See id.* Movants seek review of those portions of the Rule that disapproved the State's SIP and replaced it with a FIP, particularly in the determination of the Best Available Retrofit Technology (BART) to control NO_x emissions at three Basin Electric units and one PacifiCorp unit. *See* No. 14-9529 (filed Mar. 28, 2014) (Wyoming); No. 14-9533 (filed Mar. 31, 2014) (Basin Electric); No. 14-9534 (filed Mar. 31, 2014) (PacifiCorp). The Conservation Organizations seek review of those portions of the Rule that approved Wyoming's BART determination for two other PacifiCorp units, addressed reasonable progress goals, and approved Wyoming's decision to reject certain controls for oil and gas sources. *See* No. 14-9530 (filed Mar. 28, 2014).

Consolidation of the appeals. Because all four appeals challenge similar aspects and NO_x BART determinations in the same Rule, the Court directed the parties to confer about consolidating and organizing the appeals. Order dated 04/29/2014 (Doc. 01019241623). In a Joint Status Report, the parties presented two alternative briefing proposals, noting that both proposals "require various parties to coordinate briefing with other parties and to respond to multiple opposing parties' arguments in a single brief" and that "EPA and the Conservation Organizations believe that consolidation of the four petitions for review for

purposes of briefing, argument, and decision is appropriate.” Joint Status Report dated 05/12/2014 (Doc. 01019248374) at 2, 4-5.

The Court then entered an Order directing that “these matters are procedurally consolidated only for the purposes of submission, and, if applicable, oral argument” and setting a briefing schedule. Order dated 05/15/2014 (Doc. 01019250447) at 3. The Court also advised:

All parties and intervenors, but the state and industry parties in particular, are *strongly encouraged to consolidate briefing* whenever possible and to maximize the opportunity provided by the staggered briefing schedule to *avoid duplicative argument*, which will not be viewed favorably by the court.

Id. at 5 (emphases added).

The stay. The Court granted Movants’ motions to stay the portions of the Rule challenged in their petitions pending the appeal. *See* Order dated 09/09/2014 (Doc. 01019307361).

The merits briefing. Pursuant to the Court’s direction, Movants staggered their briefs (with Wyoming filing its Opening, Response, and Reply Briefs ahead of Basin Electric and PacifiCorp), coordinated their arguments to efficiently use their pooled word limits and minimize duplication, and cited and/or incorporated arguments raised in each other’s briefs. Specifically, in an effort to avoid duplicative arguments, Wyoming, Basin Electric, and PacifiCorp coordinated their briefing so that one party would include a particular argument or sub-argument in

its brief, and the other parties cited to and incorporated by reference that argument. In this manner, the state and industry parties relied on the briefing as a whole, and not just on their individual briefs, to make the necessary arguments.

EPA filed a single response brief, and the parties submitted a single appendix on all four appeals. The parties filed their final briefs in March 2015. The case has not been set for argument.

The settlement. In March 2015, EPA and Basin Electric began discussions, through the Circuit Mediation Office, toward settlement of the issues regarding Basin Electric's Laramie River Units. Those discussions culminated in a Settlement Agreement signed by EPA, Basin Electric, and Wyoming. *See* Ex. A.

The Settlement Agreement "resolv[es] all of Basin Electric's challenges to the Final Rule in the Basin Electric Case and Wyoming's challenge in the Wyoming Case to the portion of the Rule establishing NO_x BART emission limits for Laramie River Units 1-3." *Id.* at 2. The Agreement first required EPA, pursuant to CAA § 113(g), 42 U.S.C. § 7413(g), to solicit public comment on and decide whether to proceed with the settlement. *Id.* at 2-3 (¶ 1). EPA published its Section 113(g) notice, 81 Fed. Reg. 96450 (Dec. 30, 2016) (Ex. B), and the Conservation Organizations submitted comments urging EPA to reject the settlement. Comments submitted 1/30/17 (Ex. C) (available on the administrative docket for EPA-HQ-OGC-2016-0773). On April 24, 2017, after obtaining

additional time to complete its Section 113(g) review, *see* Agreements (Exs. D & E), EPA notified the parties of its intent not to withdraw its consent to the Settlement Agreement. Notice (Ex. F).

The Agreement now requires Basin Electric to submit within 30 days a request to Wyoming to revise a related SIP governing sulfur dioxide emissions, Ex. A at 3-4 (¶ 3); requires Wyoming to expeditiously review and act on that submission, and, if approved, submit it to EPA for review, *id.* at 5 (¶ 4); requires EPA, within six months of receipt of a proposed SIP revision, to sign a proposed revised FIP in accordance with the agreed-upon pollution control equipment and emission limits for the Laramie River Units, *id.* at 5-6 (¶ 5); and anticipates that EPA will sign a New Final Rule within six months thereafter, *id.* at 7 (¶ 8).

The Agreement will terminate, however, if Wyoming does not submit the proposed SIP revision within 12 months or if EPA disapproves the SIP revision. *Id.* at 7-8 (¶ 9). In that event, Basin Electric and Wyoming's primary remedy (in addition to pursuing issues raised in their pending Petitions for Reconsideration) would be to revive their appeals here. *Id.* at 8 (¶ 10).

The Conservation Organizations' prior attempt to sever proceedings. In late 2015, the Conservation Organizations moved to sever and proceed with their appeal as the settlement discussions continued. EPA, Wyoming, Basin Electric, and PacifiCorp all opposed the motion. The Court denied the motion, stating that

it “will continue the procedural consolidation of these matters directed in our order dated May 15, 2014.” Order dated 01/13/2016 (Doc. 01019553173) at 2.

ARGUMENT

This Court has inherent authority to abate appellate proceedings pending a potential settlement. *See TransAm Trucking, Inc. v. Fed. Motor Carrier Safety Admin.*, 808 F.3d 1205, 1208 (10th Cir. 2015). An abatement here is prudent because the issues raised in the four appeals are substantially interrelated and, therefore, proceeding now with a portion of them while a settlement is being finalized as to another portion threatens to cause duplication of efforts, substantial confusion, and potential interference with the settlement process.

I. The Appeals are Interrelated.

The four appeals—brought by the three Movants and the Conservation Organizations—are significantly interrelated. In particular:

All four appeals challenge the same EPA Rule. The four petitions for review challenge related aspects of the same agency rule. In fact, the four petitions all challenge EPA’s BART determinations for the facilities at issue, and the challenges are similar in many significant ways (as described below).

The parties agreed the appeals should be consolidated and coordinated. EPA and the Conservation Organizations represented early on that “consolidation of the four petitions for review for purposes of briefing, argument, and decision is

appropriate,” and the parties’ briefing proposals “require[d] various parties to coordinate briefing with other parties and to respond to multiple opposing parties’ arguments in a single brief.” Joint Status Report (Doc. 01019248374) at 2, 4-5.

The Court consolidated the appeals, “for the purposes of submission, and, if applicable, oral argument,” and it issued a coordinated schedule, with staggered petitioners’ briefs, a combined EPA response brief, and a single appendix for all four appeals. 5/15/14 Order (Doc. 01019250447) at 3, 4-7.

The parties heeded the Court’s admonition “to consolidate briefing whenever possible and to maximize the opportunity provided by the staggered briefing schedule to avoid duplicative argument.” *Id.* at 5; *see also* 4/29/14 Order (Doc. 01019241623) at 3 (directing the parties, in preparing briefing proposals, to “confer with each other about how best to consolidate and organize the briefing and the record preparation process for these matters in order to eliminate duplicative argument and minimize the work of counsel”).

All four appeals converge on the same legal issues. As is clear from Petitioners’ briefing in their own appeals and in response to the Conservation Organizations’ appeal, the four appeals may point to different facilities, but they all raise the same core legal issues:

- The wide discretion afforded to the States in assessing BART, *see, e.g.*, Wyo. Op. Br. (Doc. 01019398581) at 35; Basin Op. Br. (Doc. 01019398754)

at 15; PacifiCorp Op. Br. (Doc. 01019398104) at 15; Wyo. Resp. Br. (Doc. 01019398633) at 11-12; PacifiCorp Resp. Br. (Doc. 01019398110) at 12-13; Wyo. Reply Br. (Doc. 01019398645) at 2-4; Basin Reply Br. (Doc. 01019398761) at 8-10; PacifiCorp Reply Br. (Doc. 01019398116) at 5;¹

- The level of deference EPA must give to a State's BART determination, the showing required for EPA to reject a SIP, and the resulting impact on this Court's review standard, *see, e.g.*, Wyo. Op. Br. at 35; Basin Op. Br. at 14-20; PacifiCorp Op. Br. at 14-21, 34-35; Wyo. Resp. Br. at 7-8, 10-12; PacifiCorp Resp. Br. at 14-15; Wyo. Reply Br. at 4-5, 20-22; Basin Reply Br. at 5-8; PacifiCorp Reply Br. at 2-3;
- The extent to which the BART Guidelines establish presumptive limits, are non-binding as to smaller facilities, and are flexible as to larger facilities in a State's assessment of the BART factors, *see, e.g.*, Wyo. Op. Br. at 36-51; Basin Op. Br. at 14 n.8, 24-28; PacifiCorp Op. Br. at 23-27 & n.9; Wyo. Resp. Br. at 7-8; PacifiCorp Resp. Br. at 13-14; Wyo. Reply Br. at 19-20, 22-29; Basin Reply Br. at 2-5; PacifiCorp Reply Br. at 3-6;
- Appropriate methods for addressing the BART cost factor, including application of the Control Cost Manual, *see, e.g.*, Wyo. Op. Br. at 54-57;

¹ The same document numbers apply to later references to these same briefs; for simplicity's sake, they are not repeated each time.

Basin Op. Br. at 26-35; PacifiCorp Op. Br. at 28-29, 32; Wyo. Resp. Br. at 12-14; PacifiCorp Resp. Br. at 17-23, 25-29; Wyo. Reply Br. at 12-15; Basin Reply Br. at 3-5, 11-17; PacifiCorp Reply Br. at 14-17;

- Appropriate methods for addressing the BART visibility factor, *see, e.g.*, Wyo. Op. Br. at 57-58; Basin Op. Br. at 35-38; PacifiCorp Op. Br. at 29-30, 33-34; Wyo. Resp. Br. at 15-18; PacifiCorp Resp. Br. at 25; Basin Reply Br. at 17-19; PacifiCorp Reply Br. at 13-14;
- The manner by which EPA must account for pre-existing pollution controls at a particular facility; *see, e.g.*, Basin Op. Br. at 43-45; PacifiCorp Op. Br. at 36-39; PacifiCorp Resp. Br. at 19-20, 23-25, 27 & nn.12, 17; Basin Reply Br. at 19-20; PacifiCorp Reply Br. at 7-12; and
- The inconsistencies in EPA's treatment of BART at different facilities, *see, e.g.*, Wyo. Op. Br. at 51-54, 59-61; Basin Op. Br. at 19-20, 38-42; Wyo. Reply Br. at 5-12; Basin Reply Br. at 5-8; PacifiCorp Reply Br. at 12-17.

The Movants cross-referenced each other's briefs. In order to maximize their collective word limits and avoid duplicative briefing (per the Court's request), Movants often cited and/or incorporated portions of one another's briefs rather than make their own complete arguments. Thus, the state and industry parties' briefs must be read as a whole to understand the arguments applicable to any one party. This includes various references by Wyoming and PacifiCorp to arguments

made by Basin Electric. *See, e.g.*, PacifiCorp Op. Br. at 14-15, 18 n.6, 23 n.9; Wyo. Reply Br. at 1, 7, 12 n.3; PacifiCorp Reply Br. at 6 n.8, 15-16. And in response to the Conservation Organizations' Appeal, Wyoming and PacifiCorp relied in part on their Opening Briefs in their own appeals, essentially tying all of the arguments together. *See, e.g.*, Wyo. Resp. Br. at v, 3-4 n.1; PacifiCorp Resp. Br. at 3-4, 13 n.5, 19 n.12, 27 n.17.²

EPA has urged that the appeals should be heard together. EPA does not oppose this motion. And when it opposed the Conservation Organizations' earlier motion to proceed separately, EPA argued (a) that "[a]ll four petitions in this case challenge one comprehensive final rule," (b) that it submitted a single, nearly 200-page Response Brief in which it "argued that 'EPA's approach was straightforward and internally consistent across all facilities addressed in the Final Rule'" and "cross-referenced its decisions in other parts of the Final Rule in order to defend the decisions at issue, including in response to the Conservation Organizations' arguments," and (c) that "this Court must review the Final Rule as a whole in order

² Even if this Court does not abate all proceedings, as requested in this motion, due to the consolidated manner in which this litigation was briefed the parties would need to "rebrief" the case if Basin Electric's Laramie River claims are not included in the litigation going forward. PacifiCorp and Wyoming relied heavily on Basin Electric to make certain arguments, and would need to "rebrief" their arguments to address the arguments that Basin Electric covered. If PacifiCorp and Wyoming "rebrief" the arguments and positions, they will incur additional, duplicative costs and expend additional, duplicative resources.

to fully understand the arguments of the parties” and “must apply the same standard of review and interpretation of EPA’s authority under the statute to its review of all challenges to the Final Rule.” EPA Opposition (Doc. 01019550562) at 3-5 (citation omitted). These same considerations also support abatement here.

II. Abating the Entire Consolidated Action Serves the Interests of Judicial Economy, Efficiency, and Justice.

Because of the substantial interrelatedness of these appeals, proceeding now on a portion of them while the settlement of another portion remains uncertain would be inefficient, confusing, and possibly disruptive of the settlement process.

First, proceeding to argument and decision on some aspects of the case now, while there remains uncertainty regarding the settlement of Basin Electric’s appeal and portions of Wyoming’s appeal, would be inefficient and disserving of judicial economy. For the Court, it would hear argument and decide some aspects of the case (which are significantly intertwined with, and overlap, Basin Electric’s issues), while potentially having to hear a second argument and render a second decision on very similar legal issues if the settlement falls through. For the parties, they would need to re-brief the appeals, in part to avoid the inevitable confusion over which issues were being heard initially and which were being deferred due to the pending settlement, but also because, as a result of the briefing schedule and the Court’s direction, Wyoming and PacifiCorp relied on arguments elaborated upon in Basin Electric’s briefing. *See supra* at 11 n.2; *see also supra* at 7-11.

Second, proceeding directly to argument, with or without any re-briefing, would almost certainly be confusing for the Court and the parties. Because the briefs were so closely tied together, it may be unclear exactly which issues are before the Court, which legal arguments apply to those issues, and which matters the Court will need to reach to resolve the portions of the case before it. For instance, both Basin Electric and PacifiCorp raised issues regarding whether EPA violated the CAA by failing to account for existing, previously-installed pollution controls at their facilities. *See supra* at 10. They also, along with Wyoming, raised overlapping arguments about the manner in which cost and visibility should be assessed in a BART determination. *See supra* at 9-10. And PacifiCorp relied upon arguments explored at length only by Basin Electric about the BART Guidelines. *See* PacifiCorp Op. Br. at 18 n.6, 23 n.9; PacifiCorp Reply Br. at 6 n.8; Basin Op. Br. at 24-28; Basin Reply Br. at 2-5.

These many areas of overlap could lead to confusion as to whether the Court must resolve Basin Electric's arguments in the course of deciding issues specific to PacifiCorp and Wyoming. Even with re-briefing, the interrelatedness of the issues and of EPA's decisions throughout the Rule—including decisions regarding Basin Electric units that are the subject of dispute but are not yet fully and finally settled—are likely to cause confusion.

And *third*, if the Court were to hear and decide a portion of this case now, it could harm ongoing settlement efforts in a way that would be particularly unfair to Basin Electric. The conclusion of the settlement process now lies primarily in the hands of EPA. *See supra* at 5-6; Ex. A at 5-8. It is EPA who ultimately will decide whether to finalize the settlement after preparing a new FIP and taking public comment on it. Ex. A at 5-7. If this Court were in the meantime to hear and decide related issues in the other appeals, it could affect EPA's assessment of whether to approve the new FIP and finalize the settlement.

Moreover, the only parties opposing this abatement—the Conservation Organizations—are also opposed to the settlement and have vowed to ask EPA not to finalize it. They were the only parties to file substantive comments during the § 113(g) comment process. See administrative docket for EPA-HQ-OGC-2016-0773 (available at www.regulations.gov/docket?D=EPA-HQ-OGC-2016-0773). In those comments, they “urge[d] EPA to reject the proposed settlement and maintain the BART requirements for Laramie River Station set forth in EPA’s [FIP].” Ex. C at 1. They also said they will “closely scrutinize EPA’s analysis and provide comment on the proposed [FIP]” at the end of the settlement process. *Id.* at 3.

Thus, the Conservation Organizations are urging this Court to go forward with other portions of this case, as if the settlement were already a certainty, while at the same time they also are actively seeking to prevent EPA from finalizing the

settlement. If they were to succeed in both efforts, it could greatly harm Basin Electric's interest when it is left to pursue its appeal alone, after this Court has already resolved all the common legal issues in the other appeals. It is not enough that Basin Electric could participate in a more limited role as Intervenor in the other appeals (with less words in briefing, no time at oral argument, and less of a say in how the issues are presented), given the hundreds of millions of dollars at stake in its appeal and the vast interrelatedness of the issues in all four appeals.

Finally, an abatement will not unfairly prejudice the Conservation Organizations or any other party. While the settlement process has been long and complicated, and the final administrative processes will take several more months, the underlying legal, factual, and policy issues are enormously complex. BART determinations are not made quickly or lightly.

Indeed, other BART issues similarly have taken years to resolve. For instance, proceedings on Arkansas' regional haze plan have been pending now for nearly a decade: the state submitted a SIP in 2008 and 2010; EPA partially disapproved it in 2012 and promulgated a FIP in 2016; EPA recently granted a petition for reconsideration and has temporarily stayed the FIP; and petitions for

review of the FIP rule are currently abated pending settlement discussions.³ And proceedings on New Mexico's regional haze plan settled a few years ago after several years of proceedings and litigation: EPA found in 2009 that the state had failed to submit a timely SIP; the state proposed but did not finalize or submit a SIP in 2010; EPA proposed a FIP in 2011; the state submitted a SIP later in 2011; EPA issued a final rule on its FIP shortly thereafter; various parties filed petitions in this Court for review of the FIP rule; the appeals were briefed and argued, then abated in 2013 due to a tentative settlement; and the Court dismissed the petitions in 2014 after the settlement became final.⁴

Simply stated, the further delays contemplated by the settlement are not striking in light of the significant time it takes to determine BART. Therefore, EPA, Wyoming, and Basin Electric should be afforded the time necessary to complete the administrative processes required to finalize the settlement without any interference by a pending appeal raising overlapping issues.

³ Much of this history is recounted in the final rule at 81 Fed. Reg. 66332, 66333 (Sept. 27, 2016). The recent notice of the stay pending reconsideration is published at 82 Fed. Reg. 18994 (Apr. 25, 2017). *See also* administrative docket at www.regulations.gov/docket?D=EPA-R06-OAR-2015-0189; *Arkansas v. EPA*, No. 16-4270 (filed Nov. 22, 2016) (currently abated).

⁴ The procedural history is recounted in the pleadings in *Martinez v. EPA*, No. 11-9567 (filed Oct. 21, 2011). *See, e.g.*, Final Op. Br. filed 09/25/12 (Doc. 01018921670) at 17-26; Status Report and Proposal for Further Proceedings filed 07/29/2015 (Doc. 01019467729).

CONCLUSION

For the foregoing reasons, Movants request that the Court abate this entire consolidated action pending EPA's final action on the settlement. Movants also suggest that the Court require the parties to file periodic status reports stating how the settlement process is proceeding and to notify the Court promptly when the settlement process has concluded.

Dated: May 1, 2017.

Respectfully submitted,

s/ Elizabeth Morrisseau

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2017 a copy of the foregoing was served electronically on all counsel of record through the Court's CM/ECF system.

s/ Christina F. Gomez

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS**

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,753 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word in Times New Roman 14-point font.

s/ Christina F. Gomez

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

All required privacy redactions have been made to this document, and with the exception of those redactions, every document submitted in digital form is an exact copy of the written document filed with the clerk. Said document has been scanned for viruses with System Center 2012 Endpoint Protection Version 2.2.903.0 which runs real time virus scans and is updated every six hours, and according to those programs is free of viruses.

s/ Christina F. Gomez

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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by Basin Electric Power Cooperative (“Basin Electric”), the State of Wyoming (“Wyoming”), and the United States Environmental Protection Agency (“EPA”) (collectively, the “Parties”);

WHEREAS, Basin Electric is the operator and part-owner of Laramie River Station (“Laramie River”) electric generating units 1, 2 and 3; and

WHEREAS, on January 12, 2011, pursuant to Sections 169A and 169B of the Clean Air Act, 42 U.S.C. §§ 7491 and 7492, Wyoming submitted the Wyoming regional haze state implementation plan (“SIP”) to EPA for review and approval; and

WHEREAS, the Wyoming regional haze SIP established, among other things, Best Available Retrofit Technology (“BART”) emission limits for nitrogen oxides (“NO_x”) at Laramie River Units 1-3 of 0.21 pounds per one million British thermal units (“lb/MMBtu”) on a 30-day rolling average; and

WHEREAS, on January 30, 2014, EPA issued a final rule under sections 110 and 169A of the Clean Air Act, 42 U.S.C. §§ 7410 and 7491, entitled “Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze,” 79 Fed. Reg. 5032 (Jan. 30, 2014) (“Final Rule”), disapproving in part the Wyoming regional haze SIP, including the NO_x BART requirements as to Laramie River Units 1-3, and promulgating a federal implementation plan (“FIP”) that imposed a NO_x BART emission limit of 0.07 lb/MMBtu (30-day rolling average) at Laramie River Units 1-3; and

WHEREAS, Petitioners Basin Electric and Wyoming each filed a petition for review in the Tenth Circuit Court of Appeals challenging the Final Rule as it pertained to the NO_x BART emission limits for Laramie River Units 1-3; and

WHEREAS, these petitions for review, *Basin Electric Cooperative v. EPA*, No. 14-9533 (“Basin Electric Case”), and *Wyoming v. EPA*, No. 14-9529 (“Wyoming Case”), were consolidated by the Court for the purpose of briefing and argument with *Powder River Basin Resource Council v. EPA*, No. 14-9530, and *PacifiCorp v. EPA*, No. 14-9534 (collectively referred to as the “Consolidated Cases”); and

WHEREAS, Petitioners Basin Electric and Wyoming (“Petitioners”) have raised various challenges to the Final Rule in the Basin Electric Case and the Wyoming Case; and

WHEREAS, the Parties wish to implement this Settlement Agreement resolving all of Basin Electric’s challenges to the Final Rule in the Basin Electric Case and Wyoming’s challenge in the Wyoming Case to the portion of the Rule establishing NO_x BART emission limits for Laramie River Units 1-3, and thereby avoid protracted and costly litigation and to preserve judicial resources, without any admission or adjudication of fact or law.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The Parties agree and acknowledge that before this Settlement Agreement is final, EPA must provide notice in the Federal Register and an opportunity for public comment pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g). Within 10 business days after the last party signs this Settlement Agreement, EPA shall transmit the

required notice allowing for a 30-day public comment period to the Office of the Federal Register for publication in the Federal Register. After this Settlement Agreement has undergone this opportunity for notice and comment, the EPA Administrator and/or the Attorney General, as appropriate, shall within 30 days after the close of the public comment period consider any such written comments and determine whether to withdraw or withhold consent to the Settlement Agreement, in accordance with section 113(g) of the Clean Air Act. In the event EPA determines to proceed with this Settlement Agreement, this Settlement Agreement shall become final on the date that EPA provides written notice of such finality to Petitioners.

2. No later than five days after this Settlement Agreement is final pursuant to Paragraph 1 of this Settlement Agreement, the Parties shall file a joint motion notifying the Court of this Settlement Agreement and requesting that the Basin Electric Case and all claims by Wyoming specific to the determination of BART for the Laramie River Units in the Wyoming Case be stayed pending completion of the process in Paragraphs 3-8 of this Settlement Agreement. While the Parties are only agreeing to file a joint motion to stay the portions of the Consolidated Cases identified above, nothing in this Settlement Agreement shall preclude Basin Electric or Wyoming from filing motions or other pleadings requesting that the remaining claims in the Consolidated Cases, or portions thereof, be stayed pending completion of the process in Paragraphs 3-8 of this Settlement Agreement.

3. To address the limited portion of sulfur dioxide (“SO₂”) emissions in the regional haze program that would be covered under the BART Alternative and the

Western Regional SO₂ Milestone and Backstop Trading Program established under 40 C.F.R. § 51.309 (“309 Program”), Basin Electric commits to submit to Wyoming a request for a source-specific SIP revision rulemaking that will ensure that Basin Electric cannot take credit for the SO₂ emission reductions achieved through the emission requirements under Paragraph 5(b)(ii) below for the purposes of both the BART Alternative for Laramie River Units 2 and 3 and the 309 Program. Basin Electric agrees to submit this request to Wyoming no later than 30 days after this Settlement Agreement becomes final pursuant to Paragraph 1 above.

Basin Electric’s request for a source-specific SIP revision proceedings will include:

- a. A request for Wyoming to revise its SIP to provide that for all purposes under the 309 Program, including the reporting of annual emissions to Wyoming, Basin Electric must use the average SO₂ lb/MMBtu emission rates for Laramie River Units 1 and 2 achieved during the 2001-2003 BART baseline period to calculate its SO₂ emissions. Specifically, the SIP revision will provide that Basin Electric must use the SO₂ emission rates of 0.159 lb/MMBtu for Laramie River Unit 1 and 0.162 lb/MMBtu for Laramie River Unit 2, and multiply those rates by the actual heat input during the year for each unit to calculate and report emissions under the 309 Program; and
- b. An analysis of conforming amendments needed to the 309 Program (and any other SIP provisions).

4. Wyoming will expeditiously review Basin Electric's submission and promptly take action to deny the request or initiate a proceeding consistent with the applicable state laws and regulations and to submit the SIP revision, if adopted, to EPA for review pursuant to 42 U.S.C. § 7410.

5. No later than six months after EPA's receipt of a state-adopted SIP revision from Wyoming that contains conforming amendments consistent with Paragraph 3 above, EPA will sign a notice of proposed rulemaking to revise the FIP ("Revised FIP") that includes:

- a. NO_x emission limits voluntarily requested by Basin Electric as part of this Agreement for Laramie River Unit 1 of:
 - i. 0.06 lb/MMBtu on a 30-day rolling average commencing July 1, 2019; and
 - ii. 0.18 lb/MMBtu on a 30-day rolling average for the interim commencing the date that EPA's final Revised FIP becomes effective and ending June 30, 2019.

These limits are in addition to the NO_x emission limit for Laramie River Unit 1 of 0.07 lb/MMBtu on a 30-day rolling average in EPA's FIP.

- b. An alternative to the NO_x BART requirements in EPA's FIP that apply to Laramie River Units 2 and 3 which consists of:

- i. NO_x emission limits for Laramie River Units 2 and 3 of:

(1) 0.18 lb/MMBtu on a 30-day rolling average

commencing the date that EPA's final Revised FIP becomes effective and ending on December 30, 2018; and

(2) 0.15 lb/MMBtu on a 30-day rolling average

commencing December 31, 2018; and

ii. SO₂ emission limits for Laramie River Units 1 and 2 of 0.12 lb/MMBtu averaged annually across the two units commencing the date that EPA's final Revised FIP becomes effective.

c. A requirement that Basin Electric install and operate Selective Catalytic Reduction on Unit 1 by July 1, 2019; and an amendment of the existing FIP compliance date to July 1, 2019; and a requirement that Basin Electric install and operate Selective Non-Catalytic Reduction for each of Units 2 and 3 by December 31, 2018.

d. The SIP revisions identified in Paragraph 4.

6. Aspects of the Final Rule affecting Basin Electric that are not directly implicated by the terms of this Settlement Agreement (including, without limitation, other emissions limits, recordkeeping, and other requirements) shall not be altered in EPA's proposed rulemaking. Once signed, the notice of proposed rulemaking shall be transmitted to the Office of the Federal Register as expeditiously as practicable for publication.

7. Petitioners Basin Electric and Wyoming shall not file comments objecting to the proposed rule discussed in Paragraph 5 above if the emission limits and control technology requirements, including averaging times and compliance dates, correspond to

the terms in that Paragraph, and the other aspects of the Final Rule remain unchanged as provided for in Paragraph 6 above. However, nothing in this Settlement Agreement shall be construed to limit or modify the rights of Petitioners to submit non-adverse technical comments on the proposed rule, if any, or to object to the application of the same emissions limits, including averaging times and compliance dates, and the other aspects of the Final Rule in any other rulemaking regarding any facility other than the Laramie River Station units.

8. If EPA signs a new final rule (“New Final Rule”) within six months after publication of proposed rulemaking described in Paragraph 5 that corresponds to the emission limits, including averaging times and compliance dates, set forth in Paragraph 5 of this Settlement Agreement, and does not alter the other aspects of the Final Rule as provided for in Paragraph 6 of this Settlement Agreement, then Basin Electric and EPA shall, after that New Final Rule has been published in the Federal Register, promptly file an appropriate pleading for the dismissal of the Basin Electric Case with prejudice in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure, with each party to bear its own costs and attorneys’ fees. Furthermore, Wyoming and EPA shall promptly file an appropriate pleading dismissing with prejudice all claims by Wyoming specific to the determination of BART for the Laramie River Units in the Wyoming Case, with each party to bear its own costs and attorneys’ fees.

9. This Agreement shall terminate if: (a) Wyoming does not submit to EPA a SIP revision as described in Paragraph 4 above within twelve months after this

Agreement becomes effective; or (b) EPA takes final action to disapprove such a SIP revision at any time before the New Final Rule is signed.

10. If this Agreement terminates pursuant to Paragraph 9 above, or if EPA does not sign a New Final Rule in accordance with the provisions of Paragraph 8, then the Petitioners' sole and exclusive remedy under this Settlement Agreement shall be the right to ask the Court to lift any stay of the Basin Electric Case and portions of the Wyoming Case, along with any stay of the remaining claims or portions thereof in the Consolidated Cases, and proceed in those cases on a schedule proposed by the parties and approved by the Court. Notwithstanding the foregoing sentence, if EPA does not sign a New Final Rule in accordance with the provisions of Paragraph 8, Basin Electric or Wyoming may also pursue remedies that they may have independent of this Settlement Agreement, including their pending Petitions for Reconsideration of the Final Rule and any judicial relief related thereto.

11. Petitioners waive any right to challenge in any court or administrative proceeding any portion of that New Final Rule that corresponds to the emission limits, including averaging times, compliance dates, and control technology requirements, set forth in Paragraph 5 of this Settlement Agreement. However, nothing in this Settlement Agreement shall be construed to limit or modify the rights of Petitioners to seek reconsideration or judicial review of any New Final Rule that establishes emission limits for Laramie River Units 1-3 that differ in any respect from the emission limits, including averaging times and compliance deadlines set forth in Paragraph 5, or that materially alters the other provisions of the Final Rule as discussed in Paragraph 6.

12. Wyoming does not waive sovereign immunity by entering into this Settlement Agreement and retains immunity and all defenses available to it under state and federal law as a sovereign.

13. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. Furthermore, nothing in the terms of this Settlement Agreement shall be construed to limit EPA's authority to alter, amend or revise any final rule EPA may issue pursuant to Paragraph 8 or to promulgate superseding regulations or guidance. Nor shall anything in this Settlement Agreement be construed to limit Basin Electric's or Wyoming's rights to challenge such altered, amended, or revised final rule or superseding regulations or guidance provided the basis for such challenges exist independently from this Settlement Agreement.

14. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the obligations of Basin Electric to obtain permits pursuant to state and federal law to implement the provisions of this Settlement Agreement.

15. The Parties may extend the dates set forth in this Settlement Agreement or otherwise modify this Settlement Agreement by a written agreement executed by counsel for the Parties. If a lapse in EPA's appropriations occurs within 120 days prior to the deadlines in Paragraphs 1, 2, 3, 5, 8, and 9 of this Settlement Agreement, that deadline shall be extended automatically one calendar day for each calendar day of delay caused

by the lapse in appropriations. Any notices required or provided for by this Agreement shall be in writing and shall be deemed effective (1) upon receipt if sent by U.S. Postal Service, or (2) upon the date sent if sent by overnight delivery, facsimile, or email.

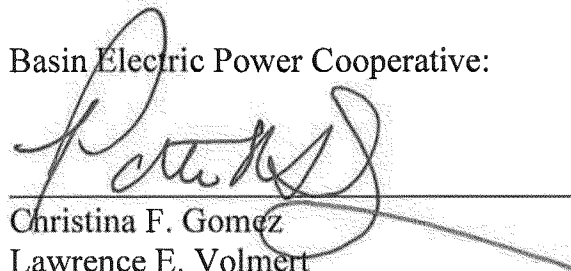
16. Each party shall bear its own costs, including attorneys' fees, in this litigation, including attorneys' fees and costs associated with monitoring, overseeing, or implementing this Settlement Agreement, and including participation in any administrative proceedings contemplated by this Settlement Agreement.

17. This Settlement Agreement constitutes the complete and entire agreement among the Parties. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Settlement Agreement and may not be used by the Parties to vary or contest the terms of this Settlement Agreement or as evidence of the Parties' intent in entering into this Settlement Agreement.

18. The undersigned representatives of each party certify that they are fully authorized by the party that they represent to bind that respective party to the terms of this Agreement.

SO AGREED:

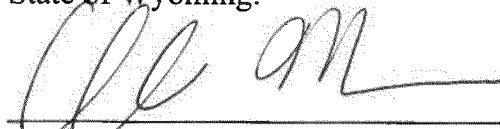
Basin Electric Power Cooperative:

A handwritten signature in black ink, appearing to read 'Christina F. Gomez', is written over a horizontal line.

Christina F. Gomez
Lawrence E. Volmert
Garrison W. Kaufman
Denise W. Kennedy
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State of Wyoming:

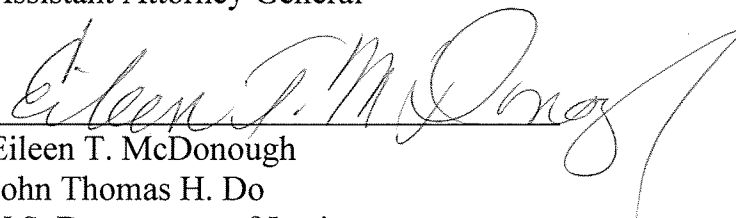
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Peter K. Michael (Wyo. Bar No. 5-2309)
Wyoming Attorney General

James Kaste (Wyo. Bar No. 6-3244)
Deputy Attorney General
Elizabeth Morrisseau (Wyo. Bar No. 7-5307)
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United States Environmental Protection Agency

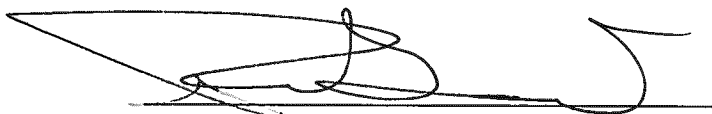
John C. Cruden
Assistant Attorney General



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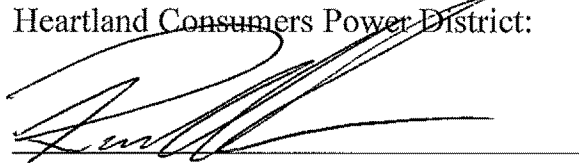
Stephanie J. Talbert
Environmental Defense Section
Environment and Natural
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Missouri Basin Power Project

A handwritten signature in black ink, appearing to read 'Paul M. Sukut', is written over a horizontal line.

**Paul M. Sukut
Chief Executive Officer and General Manager
Basin Electric Power Cooperative**

Heartland Consumers Power District:

A handwritten signature in black ink, appearing to read "Russell Olson", is written over a horizontal line.


Russell Olson
Chief Executive Officer

Lincoln Electric System:

A handwritten signature in black ink, appearing to read 'Kevin G. Wailes', is written over a horizontal line.

Kevin G. Wailes
Chief Executive Officer

Tri-State Generation and Transmission
Association, Inc.




Barry Ingold
Senior Vice President of Generation

Western Minnesota Municipal Power Agency:

A handwritten signature in cursive script, reading "Thomas J. Heller", written over a horizontal line.

Thomas J. Heller
Assistant Secretary/Treasurer

Wyoming Municipal Power Agency:



Larry E. LaMaack
Executive Director

9414914_1

EXHIBIT B

Beach, L.L.C., Indianapolis Power & Light Company, Mountain View Power Partners, LLC, Mountain View Power Partners IV, LLC, The Dayton Power and Light Company, AES Ohio Generation, LLC.

Description: Triennial Market Power Analysis for Northeast Region of the AES MBR Affiliates.

Filed Date: 12/21/16.

Accession Number: 20161221-5469.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10-3246-011; ER10-2475-017; ER10-2474-017; ER13-1266-012; ER15-2211-009.

Applicants: PacifiCorp, Nevada Power Company, Sierra Pacific Power Company, CalEnergy, LLC, MidAmerican Energy Services, LLC.

Description: Notice of Non-Material Change in Status of the PacifiCorp, et al.

Filed Date: 12/21/16.

Accession Number: 20161221-5471.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17-236-001.

Applicants: Southwestern Public Service Company.

Description: Tariff Amendment: 12-23-16_ER17-236 Admend to be effective 1/1/2016.

Filed Date: 12/23/16.

Accession Number: 20161223-5096.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: ER17-646-000.

Applicants: Orange and Rockland Utilities, Inc.

Description: \$205(d) Rate Filing: Amendment to Revised Power Supply Agreement to be effective 12/22/2016.

Filed Date: 12/23/16.

Accession Number: 20161223-5006.

Comments Due: 5 p.m. ET 1/13/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: December 23, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31657 Filed 12-29-16; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2016-0773; FRL 9957-82-OGC]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA"), notice is hereby given of a proposed settlement agreement to address a consolidated set of petitions for review filed by several parties in the United States Court of Appeals for the Tenth Circuit. Basin Electric Power Cooperative ("Basin Electric") and the State of Wyoming ("Wyoming") (collectively, "Petitioners") filed petitions for review of an EPA rule addressing the regional haze requirements in Wyoming. Specifically, Basin Electric challenged the rule as it pertained to the NO_x BART emission limits for Laramie River Units 1-3. Wyoming also challenged the rule based on EPA's action on the Laramie River Units and on other grounds. The proposed settlement agreement would establish deadlines for EPA to take specified actions.

DATES: Written comments on the proposed settlement agreement must be received by January 30, 2017.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2016-0773, online at www.regulations.gov. For comments submitted at www.regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-5571; fax number (202) 564-5603; email address: anderson.lea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

Petitioners filed petitions for review of EPA's rule titled "Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze," 79 FR 5032 (Jan. 30, 2014) ("Final Rule"). In the Final Rule, EPA disapproved, in part, the Wyoming regional haze SIP, including the NO_x BART requirements as to Laramie River Units 1-3, and promulgated a federal implementation plan ("FIP") that imposed a NO_x BART emission limit of 0.07 lb/MMBtu (30-day rolling average) at Laramie River Units 1-3. Petitioners have raised various challenges to the Final Rule. This settlement agreement would resolve all of Basin Electric's challenges to the Final Rule and those portions of Wyoming's challenge to the Final Rule related to the establishment of NO_x BART emission limits for Laramie River Units 1-3.

Under the terms of the proposed settlement agreement, after the settlement agreement becomes final the parties will take specified actions as provided for in the settlement agreement. Please review the settlement agreement for additional details, available in the public docket at EPA-HQ-OGC-2016-0773.

For a period of 30 days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the

agreement should be withdrawn or withheld, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action under Docket ID No. EPA-HQ-OGC-2016-0773 contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use the www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the ADDRESSES section.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through www.regulations.gov, your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 22, 2016.

Gautam Srinivasan,

Acting Associate General Counsel.

[FR Doc. 2016-31748 Filed 12-29-16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9031-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7146 or <http://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EISs) Filed 12/19/2016 Through 12/23/2016.

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

EIS No. 20160312, Draft, USFWS, CA, City of San Diego Vernal Pool Habitat Conservation Plan, Comment Period Ends: 03/06/2017, Contact: Dan Cox 916-414-6539.

EIS No. 20160313, Final, NASA, FL, Center-wide Operations at the Kennedy Space Center, Review Period Ends: 01/30/2017, Contact: Donald Dankert 321-861-1196.

EIS No. 20160314, Draft, USFS, CA, Mitsubishi Cement Corporation South Quarry Plan of Operation, Comment Period Ends: 02/13/2017, Contact: Scott Eliason 909-382-2830.

EIS No. 20160315, Draft, FHWA, IL, Interstate 290 (Eisenhower Expressway), Comment Period Ends: 02/13/2017, Contact: Catherine A. Batey 217-492-4600.

EIS No. 20160316, Final, Caltrans, FHWA, CA, Eureka Arcata Route 101 Corridor Improvement Project, Review Period Ends: 01/30/2017, Contact: David Tedrick 916-498-5024.

EIS No. 20160317, Draft, BLM, NV, Sagebrush Focal Areas Withdrawal, Comment Period Ends: 03/31/2017, Contact: Mark Mackiewicz 801-636-3616.

EIS No. 20160318, Final, BR, CA, Bay Delta Conservation Plan/California WaterFix, Review Period Ends: 01/30/2017, Contact: Brooke White 916-414-2402.

Dated: December 27, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016-31758 Filed 12-29-16; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0157 and 3060-1163]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

EXHIBIT C



January 30, 2017

Lea Anderson
Air and Radiation Law Office (2344A)
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460

VIA www.regulations.gov

**RE: Proposed Settlement of Challenge to Wyoming Regional Haze NO_x-BART
Emissions Limits for Laramie River Station Units 1-3, EPA-HQ-OGC-2016-0773**

Dear Ms. Anderson:

Pursuant to Clean Air Act (“CAA”) section 113(g), 42 U.S.C. § 7413(g), we submit these comments on behalf of National Parks Conservation Association, Powder River Basin Resource Council, Sierra Club, and Wyoming Outdoor Council (collectively, “Conservation Organizations”) regarding the U.S. Environmental Protection Agency’s (“EPA”) proposal to settle certain claims challenging its Wyoming Regional Haze federal implementation plan.¹ As described below, the Conservation Organizations are concerned that the proposed settlement, which would relax BART emissions limits for haze-causing nitrogen oxide (NO_x) and sulfur dioxide pollution for Laramie River Station Units 1-3, will not achieve the level of visibility improvement mandated by the CAA’s regional haze provisions, 42 U.S.C. § 7491. The Conservation Organizations urge EPA to reject the proposed settlement and maintain the BART requirements for Laramie River Station set forth in EPA’s federal implementation plan. *See* Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze, 79 Fed. Reg. 5,032 (Jan. 30, 2014) (“Final Rule”).

¹ EPA’s notice of the proposed settlement indicates that it “will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question.” Notice of proposed settlement agreement; request for public comment, 81 Fed. Reg. 96,450 (Dec. 30, 2016). Although the Conservation Organizations are parties to the Wyoming Regional Haze litigation, they are not parties to the proposed settlement agreement. Accordingly, EPA should consider and respond to these comments.

The CAA calls for the elimination of human-caused haze pollution that mars vistas at our nation's most treasured public lands—including National Parks such as Yellowstone and Badlands and wilderness areas nationwide. *See* 42 U.S.C. § 7491(a)(1). As the first major step toward restoring natural visibility, states are required to identify emission limits that reflect installation of the “Best Available Retrofit Technology,” or “BART,” at major stationary sources of haze pollution that began operating between 1962 and 1977 and have an adverse impact on visibility in a Class I area of 0.5 deciview or more. *Id.* § 7491(b)(2); 40 C.F.R. pt. 51, App. Y.² Because of their age and scale, BART sources make an outsized contribution to the regional haze problem. *See, e.g.,* Proposed Rule, Regional Haze Regulations, 62 Fed. Reg. 41,138, 41,149 (July 31, 1997) (“The provisions in the Act requiring BART appear to demonstrate Congress’ intention to focus attention on this specific set of large existing sources, which are minimally controlling emissions, as possible candidates for emissions reductions needed to make reasonable progress toward the national visibility goal.”). Therefore, focusing on “the best system of continuous emission reduction” for these sources, 40 C.F.R. § 51.301, is essential to eliminating human-caused haze.

Although EPA regulations allow states to propose alternatives to BART, EPA may only approve such alternatives if they achieve “greater reasonable progress” toward eliminating visibility impairment than would implementation of BART. 40 C.F.R. § 51.308(e); *see Ctr. for Energy and Economic Devel. v. EPA*, 398 F.3d 653, 660 (D.C. Cir. 2005) (holding that 42 U.S.C. § 7491(b)(2) requires application of BART unless a BART-alternative program “would achieve greater progress than BART”).

Basin Electric’s Laramie River Station, in Platte County, Wyoming, consists of three large (550 MW) coal-burning units. Proposed Rule, Wyoming Regional Haze State Implementation Plan, Federal Implementation Plan, 78 Fed. Reg. 34,738, 34,753 (June 10, 2013). Because the plant’s NO_x pollution contributes substantially to visibility impairment at a number of Class I areas—particularly Badlands, Wind Cave, and Rocky Mountain National Parks and Rawah Wilderness—it is subject to the CAA’s stringent BART-retrofit provisions. *See id.* at 34,748, 34,775.

In the Final Rule, EPA identified selective catalytic reduction (“SCR”) technology—the most stringent NO_x-control technology available—as BART. In EPA’s words, its determination “was thoughtful, consistent with applicable statutory and regulatory requirements, and well-supported by the administrative record.” *Wyoming, et al. v. U.S. Env’tl. Protection Agency*, Nos. 14-9529, 14-9530, 14-9533, 14-9534, Final Brief of Respondent, at 38 (10th Cir., filed Mar. 16, 2015). Specifically,

² A deciview is a measured unit of visibility. 40 C.F.R. § 51.301.

EPA found that the addition of SCR resulted in a significant improvement on visibility at the most impacted Class I area on both a source-wide (1.62 deciviews) and unit-specific (0.52-0.57 deciviews) level. Final Rule, 79 Fed. Reg. at 5,047 (Table 18). The incremental visibility improvement of LNB/OFA plus SCR was approximately twice that of SNCR, further supporting EPA's selection of the most stringent control. *Id.* at 5,047. The average cost effectiveness per unit (\$4,375 to \$4,461/ton) and incremental cost effectiveness (\$5,449 to \$5,871/ton) were also in line with other FIPs and were deemed particularly reasonable given the significant visibility improvement provided by LNB/OFA with the addition of SCR. *Id.* at 5047.

Id. at 151.

The Conservation Organizations believe that the proposal to replace the appropriate, BART-based emissions limits in the Final Rule with less-stringent limits called for in the settlement will not satisfy the regulatory requirement that BART alternatives achieve "greater reasonable progress" toward eliminating visibility impairment than would implementation of BART. 40 C.F.R. § 51.308(e). However, because EPA has not yet publicly disclosed any analysis that compares the visibility benefits of BART and the BART alternative proposed in the settlement agreement, the Conservation Organizations are unable to fully comment on the legality or appropriateness of EPA's proposal. If EPA finalizes the settlement, we expect EPA to thoroughly and rationally support its better-than-BART finding. The Conservation Organizations will closely scrutinize EPA's analysis and provide comment on the proposed rule.

The Conservation Organizations are also concerned that the proposed settlement allows the parties to the settlement to seek further delay in judicial resolution of all challenges to the portions of the Final Rule that are distinct from the Laramie River Station BART determinations. In addition to Basin Electric and Wyoming's challenges of the Laramie River Station BART determinations, Wyoming and PacifiCorp raised challenges related to EPA's BART determinations for two other coal-fired power plants—Wyodak and Dave Johnston Unit 3. Emissions reductions required under the Final Rule for all of these units are stayed pending the resolution of these consolidated challenges. Further, Powder River Basin Resource Council, National Parks Conservation Association, and Sierra Club have challenged as insufficiently stringent EPA's BART determinations for Naughton Units 1 and 2, as well as EPA's decision to forego limitations on haze-causing emissions from the oil and gas industry and EPA's failure to establish reasonable progress goals for Wyoming as required by EPA's regulations. All of these challenges were filed nearly three years ago and have been fully briefed for almost two years. Their resolution should not be delayed

by an additional two years as a result of EPA's unrelated settlement of challenges to the Laramie River Station BART requirements. The Conservation Organizations urge EPA to take steps to ensure these separate legal challenges proceed without further delay. In addition, and at a bare minimum, EPA should ask the Tenth Circuit Court of Appeals to lift the stay of EPA's well-supported BART requirements so that statutorily mandated emissions reductions are not unnecessarily and unjustifiably deferred.

Please do not hesitate to contact us should you wish to discuss this matter.

Sincerely yours,



Jenny Harbine
Katherine O'Brien

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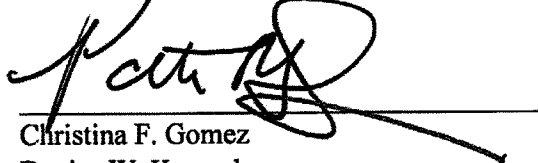
EXHIBIT D

AGREEMENT

The United States Environmental Protection Agency ("EPA"), the Basin Electric Power Cooperative ("Basin Electric"), and the State of Wyoming ("Wyoming") (jointly referred to as "the Parties") hereby agree that one of EPA's deadlines in Paragraph 1 of the Settlement Agreement executed by the Parties to resolve *Basin Electric Cooperative v. EPA*, No. 14-9533 (10th Cir.), and to partly resolve *Wyoming v. EPA*, No. 14-9529 (10th Cir.), should be extended pursuant to Paragraph 15 of that Agreement. Specifically, the Parties agree that the deadline for EPA to determine whether to withdraw or withhold consent to the Settlement Agreement, in accordance with section 113(g) of the Clean Air Act, shall be extended to April 3, 2017.

So Agreed:

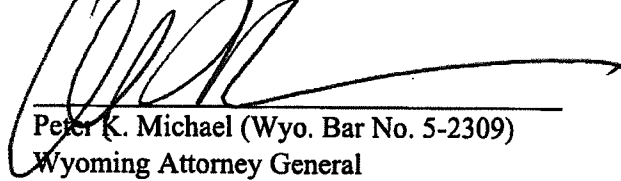
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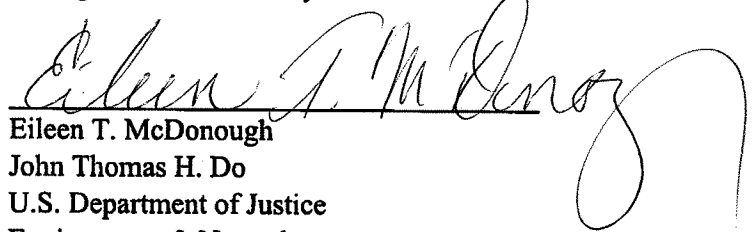
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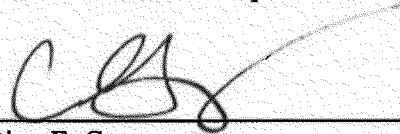
EXHIBIT E

AGREEMENT

The United States Environmental Protection Agency ("EPA"), the Basin Electric Power Cooperative ("Basin Electric"), and the State of Wyoming ("Wyoming") (jointly referred to as "the Parties") hereby agree that one of EPA's deadlines in Paragraph 1 of the Settlement Agreement executed by the Parties to resolve *Basin Electric Cooperative v. EPA*, No. 14-9533 (10th Cir.), and to partly resolve *Wyoming v. EPA*, No. 14-9529 (10th Cir.), should be extended pursuant to Paragraph 15 of that Agreement. Specifically, the Parties agree that the deadline for EPA to determine whether to withdraw or withhold consent to the Settlement Agreement, in accordance with section 113(g) of the Clean Air Act, shall be extended to May 3, 2017.

So Agreed:

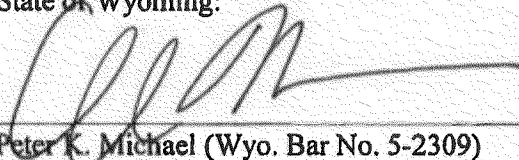
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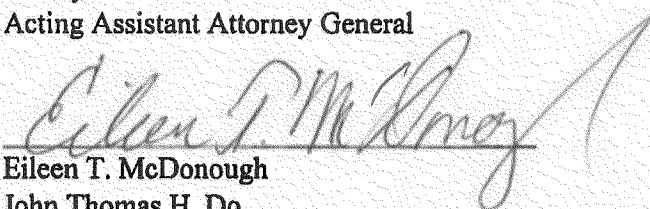
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EXHIBIT F

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April 24, 2017

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Re: *State of Wyoming, et al., v. EPA* (10th Cir.), Nos. 14-9529, 14-9530, 14-9533, 14-9534

Dear Counsel:

Paragraph 1 of the Settlement Agreement in this matter requires the United States Environmental Protection Agency ("EPA") to notify Basin Electric Power Cooperative and the State of Wyoming as to whether the Agency intends to proceed with the Settlement Agreement after the comment process required by section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g). I am writing to inform you that this process has been completed and both EPA and the Department of Justice have determined not to withdraw their consent to the Settlement Agreement. A copy of the Settlement Agreement is attached.

Sincerely,

Jeffrey H. Wood
Acting Assistant Attorney General

/s/ Eileen T. McDonough
Eileen T. McDonough
John Thomas H. Do

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